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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ROBERTO HECKSCHER, Defendant.	**No. CR 09 - 0998 SI** **UNITED STATES' SENTENCING MEMORANDUM** Date: May 14, 2010 Time: 11:00 a.m. Judge: Hon. Susan Illston

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I. INTRODUCTION

The United States respectfully submits this memorandum in connection with the forthcoming sentencing of ROBERTO HECKSCHER ("Heckscher"), now scheduled for Friday, May 14, 2010, at 11:00 a.m.

Defendant's criminal conduct was extraordinary. Beginning in 1979, Heckscher proceeded to engage in systematic fraud of his family, friends, neighbors, and business partners that continued unabated for thirty years. Heckscher concocted an elaborate scam based on the purported use of short term promissory notes. He did so in large part to fuel a secret, second, sorted life of gambling in the casinos of Las Vegas, Lake Tahoe, and Atlantic City.

For three decades, Heckscher solicited millions of dollars from investors under false

pretenses, failed to invest such funds as promised, and then converted those funds for his own benefit, and the benefit of others. This criminal conduct has caused millions of dollars of losses to investors, irrevocably altered the lives of generations of families, and driven many of his victims to the brink of financial ruin, emotional distress, and physical illness.

The scope, duration, and nature of Heckscher's crimes warrant the maximum punishment allowed by law, for which the Guidelines recommend a sentence of twenty years of imprisonment. Comparisons with other large-scale frauds in this District only serve to demonstrate the gravity of Heckscher's criminal conduct. The United States therefore respectfully recommends that a reasonable sentence in this case would be maximum allowable Guidelines sentence of twenty years, a term that will ensure both appropriate punishment of the defendant and promote general deterrence in the future.

II. BACKGROUND

A. Relevant Facts

Defendant Heckscher ran a multi-million dollar Ponzi scheme that has left hundreds of investors and their families financially, emotionally, and physically devastated. Heckscher's scheme began in the late 1970's and continued without pause until only a few months before he confessed to federal agents last year.

1. The Promise to Investors

In the late 1960s, Heckscher took over the tax preparation and bookkeeping business known as Irving Bookkeeping and Taxes. Heckscher provided important tax preparation and basic accounting to small businesses and individuals living and working in the Sunset District of San Francisco.

Beginning in the late 1970's, Heckscher began to approach those clients with what seemed like a reasonable proposition. Heckscher invited clients to invest their tax refunds and profits from their businesses into a lending business. Heckscher promised his investors that he would use their funds to arrange short-term loans to small businesses who needed short-term operating capital. Heckscher told investors that these unidentified businesses (whose identities Heckscher never disclosed, even when pressured) could not or did not want to borrow money

from banks and other traditional lender. Heckscher told his investors that these businesses were reliable and were willing to pay slightly above the current market rate.

Heckscher explained that he could use his access to commercial lines of credit to act as a middle man for the transaction and funnel their funds to the small businesses.[1] Heckscher explained that his access to commercial credit allowed him to create a spread between the small business owner (the borrower) and the investor (the lender) that netted a return slightly higher than banks could offer on a comparable short-term Certificate of Deposit. This comparison made the investment particularly attractive to the investors, as it not only gave them a ready touchstone for comparison but also seemed to offer only slightly better than average return.

Once Heckscher obtained their funds, Heckscher typically contacted each investor at the end of the short term loan. He would offer to roll the investment over to another, similar short term note, to another, undisclosed small business owner or business. This process continued for some investors for years, in some cases decades. Often, Heckscher would invite the investors to invest more money with him and many of them. Some investors ultimately invested hundreds of thousands of dollars. A few even invested millions.

As the fraud became more codified, Heckscher began generating year-end statements to his clients. In what amounted to his annual report, Heckscher would advise investors of the amount of their principal investment, the return based on short term interest rate for the year, and advise them of the "rate" for the upcoming year. If applicable, Heckscher would also include a check made payable to the investor, representing the "interest" generated on the year's loans.

While the particular interest rate varied, Heckscher generally promised his investors an annual return of between roughly 7 to 13% return on their principal. Many investors received hundreds, and some thousands of dollars in interest payments over the life of the fraud. None of it was legitimate.

2. The Betrayal of Investors

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[1]Heckscher did in fact own and operate a series of Baskin-Robbins franchises as a sideline to his legitimate bookkeeping and tax preparing business. Heckscher apparently used that fact to spin his tale to investors about leveraging his commercial credit line into promissory notes to other small businesses. While there may have been some legitimate lending in the early years of the scam, defendant's bank records and his own confession show little evidence of legitimate lending at anytime in the last 10 to 15 years, if not longer.

In reality, Heckscher operated a Ponzi scheme for thirty years that paid out yearly "profits" to existing investors from the monies he continued to collect from an ever-widening circle of new investors. While Heckscher used some of the funds to make "interest" payments to his investors on the fictitious "loans" he had described, he used the remainder for his personal use, including regular gambling trips to Las Vegas, Lake Tahoe, and Atlantic City.

Based on the FBI's investigation as well as the findings in the Probation Department's Presentence Report, the United States believes that Heckscher, whether by passage of time, loss of memory, or intentional deception, has vastly understated the amount and scale of his gambling habit and use of investor funds. The defendant himself admitted to the FBI and in his plea agreement with the Court that he used investor money to gamble. The Probation Officer has found evidence that defendant Heckscher established lines of credit at casinos as far as 1988. *See* PSR, ¶58. Moreover, the PSR also documents that the defendant has left a trail of bad checks, civil judgments, and an at least one outstanding criminal warrant strewn across the state of Nevada.

Yet, perhaps most tellingly, counsel for the United States has heard both directly from victims in impact reports, over the telephone, and from the Probation Officer of story after story after of victims encountering Heckscher at gaming tables in Lake Tahoe and Las Vegas. Of meeting the defendant, only to have Heckscher tell them he was in town on franchise business for Baskin-Robbins. One victim, Dan Irving, (identified in ¶44, PSR) has advised the Probation Officer and counsel that he accompanied Heckscher on regular gambling trips to Las Vegas in the 1980s. On at least one occasion, Mr. Irving recalls that Heckscher arranged for the two of them to fly to Las Vegas on a private jet. Upon arriving at the airport, Mr. Irving states that two men were met by (literally) a legion of Roman guards from Caesar's Palace Hotel and Casino, led by costumed hotel staff portraying Caesar and Cleopatra – with accompanying trumpet fanfare. Whether Heckscher paid for such a greeting himself – or paid for by a hotel anxious to fete a regular big gambler – Heckscher, by all accounts, relished the attention.

3. The End of the Fraud

When the financial crisis rolled across the nation in 2008, Heckscher had already known

for at least 5 years that his fraud was millions of dollars in the hole with no prospect of full repayment. Nevertheless, Heckscher continued to solicit new funds from new investors in order to reimburse prior investors, stave off lawsuits, and avoid detection by law enforcement.

Ultimately, when faced with no way out, Heckscher attempted to commit suicide rather than turn himself in the authorities. Only after his family had contacted police did Heckscher finally muster the self-respect to confess his conduct to the Government and cooperate with the investigation and face this Court.

4. Summary of Victim Loss and Restitution

By October 2009, Heckscher had caused losses to approximately 292 victim groups,[2] who had collectively suffered a loss of approximately $53,878,508. After subtracting out interest payments and prior repayments of principal, the United States estimates that victims are owed approximately $34,488,551 in restitution, based on the information received from victims and the records of the defendant.

However, the United States advises the Court that the FBI made these estimates as of approximately March 31, 2010. Counsel and the Probation Department has continued to receive information from victims, up to and including May 7, 2010. The United States has also been advised that many victims are in the process of completing and mailing or delivering their impact reports to the Court and counsel. As such, the total amount of restitution and loss may still increase. However, the United States is confident that the total loss for this conduct will not exceed $100 million, such that any revision will not effect the calculation of loss under Section 2B1.1 of the Guidelines.

B. Procedural History

On Friday, October 30, 2010, defendant was arraigned on a one count information before

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[2]The United States intentionally uses the term "group" to indicate each distinct record of investment with Heckscher. In many cases, couples and families pooled their monies to make a single, lump sum contribution with Heckscher. In other cases, parents made an initial investment with Heckscher, and their children, when they grow older, added to that principal under their parents' name and account. In addition, many of the victims have advised the United States that they made their investments on behalf of their children or grandchildren (i.e., for the benefit of their heirs and assigns) and thought of that money/investment as really belonging to their children and grandchildren. As a result, if all of those individual investors and intended beneficiaries were identified singularly, the number of victims would be well over 500, and potentially as high as 1,000 persons or more.

the Honorable Elizabeth D. Laporte. At that time, the defendant waived a formal detention hearing and was remanded to the custody of the United States Marshal. The defendant has been in continuous federal custody since that time.

Later on October 30, 2010, the defendant appeared before this Court and pled guilty pursuant to a plea agreement to the single count of the information, 18 U.S.C. § 1341, mail fraud. The defendant's sentencing was scheduled for Friday, May 14, 2010.

On May 4, 2010, the United States filed a notice pursuant to 18 U.S.C. § 3664(d)(5), advising the Court that the number and losses suffered by all victims were not ascertainable and recommending that the Court set the determination of the amount of restitution and distribution to victims for a hearing no later than ninety (90) days after sentencing.

III. DISCUSSION

A. Applicable Law

The advisory Sentencing Guidelines promote the "basic aim of Congress in enacting the Sentencing Reform Act, namely "ensuring similar sentences for those who have committed similar crimes in similar ways." *United States v. Booker*, 125 S.Ct 738, 760 (2005). In furtherance of that goal, a sentencing court is required to "consider the Guidelines 'sentencing range established for applicable category of offense committed by the applicable category of defendant,' the pertinent Sentencing Commissions policy statements, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims." Id. at 764 (citations omitted).

Along with the Guidelines, the other factors set forth in Section 3553(a) must be considered. Section 3553(a) directs the Court to impose a sentence sufficient, but not greater than necessary" to comply with the purposes set forth in paragraph two. That sub-paragraph sets forth the purposes as:

> (A) to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal conduct;
>
> (C) to protect the public from further crimes of the defendant; and,

(D) to provide the defendant with needed educational or vocational training medical care, or other correctional treatment in the most effective manner.

Section 3353(a) further directs the Court – in determining the particular sentence to impose – to consider: (1) the nature and seriousness of the offense and the history and characteristics of the defendant; (2) the statutory purposes noted above; (3) the kinds of sentences available; (4) the kinds of sentences and the sentencing range as set forth in the Sentencing Guidelines; (5) the Sentencing Guidelines policy statements; (6) the need to avoid unwarranted sentencing disparities; and, (7) the need to provide restitution to any victims of the offense. *See* 18 U.S.C. § 3553(a).

In the post-*Booker* era, district courts making sentencing decisions must make the Guidelines "the starting point and the initial benchmark" for their decisions. *Gall v. United States*, 128 S.Ct. 586, 596 (2007); *United States v. Carty*, 520 F.3d 984, 992 (9th Cir.2008) (quoting *Gall*). While district courts are not required to impose a sentence within the Guidelines, they must "give serious consideration to the extent of any departure from the Guidelines," and they must then "explain [the] conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications." Carty, 520 F.3d at 992 (quoting Gall, 128 S.Ct. at 594).

"While the Guidelines are to be respectfully considered, they are one factor among the § 3553(a) factors that are to be taken into account in arriving at an appropriate sentence." *Carty*, 520 F.3d at 991 (citing *Kimbrough v. United States*, 128 S.Ct. 558, 570 (2007)). "[T]he Guidelines factor [may not] be given more or less weight than any other." *Id.* So while the Guidelines are the "starting point and initial benchmark" and must "be kept in mind throughout the[sentencing] process," *id.*, the Guidelines range constitutes only a touch-stone in the district court's sentencing considerations. *See id.* Thus, in sum, the district court must consider both the seven § 3553(a) factors and the Guidelines when imposing sentence.

In arriving at a sentence, a district court need not expressly state how each of the § 3553(a) factors influenced its decision: "[t]he district court need not tick off each of the § 3553(a) factors to show that it has considered them." *Carty*, 520 F.3d at 992. Instead, the Ninth

Circuit "assume[s] that district judges know the law and understand their obligation to consider all of the § 3553(a) factors, not just the Guidelines." *Id.* (citing *Walton v. Arizona*, 497 U.S. 639, 653 (1990)).

B. Guidelines Calculations

1. Calculations in the Presentence Report

The United States agrees with all but one of the Probation Officer's Guidelines calculations, which are set forth in the final Presentence Report as follows:

a.	Base Offense Level (U.S.S.G. § 2B1.1(a)):	7
b.	Specific Offense Characteristic Loss in Excess of $50 Million (U.S.S.G. § 2B1.1(b)(1)(M):	+24
c.	Specific Offense Characteristic More than 250 Victims (U.S.S.G. § 2B1.1(b)(2)(C):	+6
d.	Victim-Related Adjustment Vulnerable Victims (U.S.S.G. § 3A1.1(b)(1):	+2
e.	Role in the Offense Abuse of Trust (U.S.S.G. § 3B1.3):	+2
f.	Acceptance of Responsibility (U.S.S.G. § 3E1.1):	-3
Adjusted Offense Level:		**38**
Criminal History		**I**
Guidelines Range:		**235 - 292 months**

2. Additional 2 Point Enhancement Appropriate

The United States submits that a further 2 point enhancement should apply under the victim-related adjustment because there are "large number of vulnerable victims." U.S.S.G. § 3A1.1 (b)(1)(2). The Ninth Circuit has held that a four level increase for multiple vulnerable victims should apply where a defendant knows "or had reason to know that there were a large number of victims who were vulnerable because of their age or because they had been previously victimized or "reloaded." *United States v. Okike*, 60 Fed.Appx. 100, 103 (9th Cir. 2003).

As detailed in the spreadsheet submitted to the Court under separate cover, the United States estimates that at least 84 victims are "vulnerable" by virtue of their advanced age, physical health, or mental condition. In the Government's view, without even considering the issue of multiple investments, this number of vulnerable victims warrants the additional two point enhancement under U.S.S.G. § 3A1.1(b)(2). If the Court remains uncertain, however, the decision in *Okike* demonstrates that 2 more points should be applied to this defendant's conduct.

In *Okike*, the Ninth Circuit analyzed and affirmed the application of the four point enhancement for vulnerable victims in a long-running mail fraud in which the defendant solicited funds from the victims multiple times. The appellate court found "there was clear and convincing evidence in the record that the defendant knew or had reason to know that a large number of the victims were vulnerable because they had been previously victimized, often by defendant's own companies." *Id.* (citing *United States v. Ciccone*, 219 F.3d 1078, 1087 (9th Cir. 2000) (affirming vulnerable victim adjustment where the victims were "repeatedly targeted for further fraudulent solicitations"); *United States v. Randall*, 162 F.3d 557, 560 (9th Cir. 1998) (affirming adjustment where victims were "reloaded").

The defendant's PSR in *Okike* stated that 1,411 victims transferred money to the subject account and that 527 of those people had been victimized more than once. The extensive reloading practice was established by the Government's supplemental sentencing exhibits, which included: forms used by defendant's telemarketers in which they asked potential victims questions about their prior telephone gambling experiences; payroll sheets indicating that the defendant re-victimized several customers; and a letter from one victim who described the multiple times the defendant and others called her and the many payments she made. *Id.*

Here, it is undisputed that Heckscher carried on his fraud for more than three decades, repeatedly soliciting and "investing" multiple rounds of funds from many of his victims. Heckscher's scheme was not a wide-ranging, universal scam involving cold-calling or spam email. Heckscher did not advertise to the public. Heckscher instead engaged in an even more insidious fraud, preying on people with whom he already had an established rapport.

Heckscher targeted those who were existing clients of his tax preparing business and who

had already shared their most intimate financial details. He also targeted colleagues and friends as well as "investors" who had learned of him by word of mouth from existing investors. In short, he funded his fraud – and his gambling habit – by stealing money, for three decades, from people who he knew had already lost thousands of dollars and could not afford to lose any more.

Even worse, numerous victims have reported in their Victim/Witness Impact Report and in telephone calls to Government counsel that Heckscher solicited additional rounds of "investments" as late as **the spring of 2009**. At that point, Heckscher already knew that the fraud was collapsing all around his ears. He knew these additional monies would only go to pay off other investors/victims who were demanding repayment of their principal. He knew these additional monies would almost certainly be lost to the fraud. Most importantly, he knew that many, if not, all of those final victims could not afford to lose those funds. And, yet, knowing all of that, he went ahead and took their money.

The Government estimates, based on information currently available to it, that as many as 60%, if not more, of Heckscher's investor/victims made multiple investments over the thirty-plus years of the scheme. Like the defendants in *Okike, Ciccone, and Randall,* Heckscher routinely reloaded his gambling coffers by soliciting the same group of victims over, over, and over again, knowing all the while his victims would be left with little or no money for retirement, medical care, or their children's inheritance.

Therefore, based on the language of U.S.S.G. § 3A1.1(b)(2), Ninth Circuit precedent, and the facts as applied here, the Government submits that the Court should apply the additional two points under section 3A1.1(b)(2) and calculate a total adjusted offense level, after acceptance, of 40. At Criminal History I, defendant Heckscher's guideline range, before application of section 3553(a), would more appropriately be calculated at between 292 to 365 months.

Pursuant to U.S.S.G. § 5G1.1(c)(1), the sentence shall not be more than the statutorily authorized maximum sentence of the offense of conviction. As 18 U.S.C. § 1341 provides for a maximum sentence of twenty years, unless it affects a financial institution, defendant's resultant

guideline sentence would be limited to a maximum of 240 months.[3]

C. Application of 18 U.S.C. § 3553(a)

1. Nature and Circumstances of the Offense

Heckscher's crimes were serious and long-running and devastating to victims and their families and friends. Lives have been irretrievably altered, in some cases forever, by Heckscher's blatant abuse of trust and wanton disregard for human decency. The sheer depth of Heckscher's fraud calls for severe punishment. Victims have lost, in total, millions of dollars. Yet, the monetary loss only begins to tell the true extent of the harm suffered by Heckscher's victims.

Unlike many of the victims in other investment schemes, who lost millions but had millions more to fall back on, the victims here were by and large self-made, hard-working residents of the Sunset District and other neighborhoods of San Francisco. Some had never invested in anything more sophisticated than a bank savings account. Many were small-business owners, tradesmen, hourly workers, and immigrants, people for whom nothing had ever been handed or inherited from some family trust. These were people for whom every dollar they earned was precious, for themselves, their spouses, and their children and grandchildren.

As the Court is aware, the Victim Impact Statements record a heartbreaking record of loss, anguish, and, in many cases, despair. The defendant stands responsible not only for wiping out the financial resources of generations of families – the effects of which can never be fully accounted – but also causing real emotional pain and even physical suffering among his victims, as detailed below, anonymously:

- "[I have lost] my life savings";
- "The loss of income is impossible for me to explain at my age. The principal was my security."

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[3]The United States also notes that there are at least 45 to 50 victims that appear to have been made financial insolvent as a result of the defendant's fraud. However, the United States and the FBI do not believe, based on the information currently provided by the victims, that over 100 victims have been made financially insolvent by Heckscher. As a result, the Probation Department and the United States agreed that the additional two point enhancement under U.S.S.G. § 2B1.1(b)(14)(B)(iii). If the enhancement were to have applied, Heckscher's resultant guideline range would have risen to an adjusted level of 42 with a resultant guideline range of 360 to life. However, given the number of victims who were made financially insolvent, the United States believes that a sentence at the high end of the guidelines, whether at 38 or 40, is appropriate, to the extent possible under the statute.

- "We cannot financially recover from this. . . . Life has changed completely."
- "The monies . . . were the very last of the income I received from the sale of my home of 43 years in 2004. . . I have no other savings. I was forced to leave the retirement community I lived in since 2005 . . . I could no longer afford the rent."
- "I lost my entire life savings due to this crime... I may never be able to recover this amount of money."
- "The loss of these funds has made my financial situation very difficult causing me to borrow money from my brother-in-law . . . to pay my daily expenses . . . no other source of income and live alone."
- "Our lives have been devastated . . . robbed us of our retirement, forcing use into financial hardship . . . on the verge of losing our home . . . no other income"
- "[I am a] widow on fixed income with bad health . . . can't afford some of my medication . . . have to resort to rationing"
- "Devastating effect that is irreversible . . . invested all of our retirement funds [with Heckscher] . . . I'm broke"
- "Loss of our savings and retirement and income. . . . Worried how we will pay our bills."

In addition, counsel for the United States had received phone calls from numerous victims who have expressed not only outrage and anger at the defendant but also spoken of suffering real, emotional and physical pain as a result of the crime. The physical toll has included high blood pressure, loss of appetite, hypertension, weight loss, weight gain, insomnia, depression, paranoia, and anxiety. Some have advised the United States that they are now dealing with chronic illnesses and even cancer, which they cannot necessarily link to Heckscher but which they feel as a link to the defendant on some level. Emotionally, many victims have recounted how this experience has left them feeling empty and broken. Many doubt whether they can ever trust anyone again. Many say they do not foresee how they can ever hope to overcome the anguish and pain of realizing that someone who they known for so many years – who had visited them in their homes — had in fact been lying to the face for years.

This was the fraud of the highest order. Heckscher used his personal relationship to devastate and utterly wreck the lives of hundreds of people and their family and friends. And he caused all of this harm only to fritter it away on the gaming tables of Las Vegas, Lake Tahoe, and Atlantic City. His conduct warrants the stiffest and most severe of punishments.

2. History and Characteristics of the Defendant

Heckscher repeatedly and callously lied to and violated the trust of his victim investors. He demonstrated a lack of respect for the law and basic human decency.

The length of Heckscher's criminal conduct really does speak for itself. His crimes were not a one-time event arising out of some kind of emergency or extenuating circumstance. Instead, this was the product of a series of decisions, repeated over and over again, for more than thirty years. It was within Heckscher's power to stop his crimes and try to repair the damage at any point along the way.

Instead, Heckscher sent out annual "reports" to his investors, advising them of the state of the principal and often sending along interest payments for the year's return. Heckscher apparently disregarded – or was too busy gambling to care – that his investors made real, important, life-changing decisions based on these false document and these bogus "interest" payments: decisions about retirement, college education, home purchases, wills, trusts, health care, travel, charitable gifts. All of these were made without knowing that their money was in jeopardy, and in many cases, already long gone. Although he could have ended his scheme decades ago, he chose not to do so. Instead, he waited until the summer of 2009, only after he had run out of new investors, was hounded by creditors and investors, and had tried to take his own life.

Heckscher did not undertake his scheme in response to economic hardship. He had every chance to succeed in life through honest work. While he and siblings have suffered some abuse at the hands of their father, it appears he otherwise had a reasonably normal childhood. Ultimately, he was fortunate enough to apprentice under the Irving family and ultimately was able to buy the bookkeeping business. He had, by all accounts, a loving wife and children. He had a successful second line of work as the owner of Baskin-Robbins ice cream franchises. He

appears to have a whole circle of clients, friends, and associates who cared about and enjoyed his company. Yet, even with what many would regard as a full life, he undertook to concoct an elaborate fraud that appears only served to fund a second, secret life as a high-rolling gambling in Nevada and New Jersey.

3. The Need to Afford Adequate Deterrence

The United States submits that the imposition of the maximum sentence of twenty years is necessary to afford adequate deterrence. This case has attracted the attention of the public in San Francisco and the larger Bay Area, particularly for the size of the loss compared to the background of many of the victims. The United States submits that all victims are equal before this Court. The United States further submits that it is the nature of the harm and the effect of the crime, and not the address or name of the victim, that informs the need for the appropriate punishment.

That being said, the United States submits that the need for deterrence is more important in this case, in many ways, than in cases involving stock, bonds, and other publicly traded instruments. Unlike those situations, in which federal or state regulators may serve as the first line of defense and detection, a scheme based on private contracts and purported short-term promissory notes is not susceptible to regular oversight or administrative regulation.

Indeed, the need for deterrence is especially important at small businesses like Heckscher's where individuals may operate a fraud under the misapprehension that they are "flying under the radar screen" and may be able to avoid detection or, even if detected, long jail terms. The United States respectfully submits that the Court should consider that for these types of crimes, only a sentence at the statutory maximum may deter those who would prey upon small investors and their families.

4. The Need to Avoid Unwarranted Sentencing Disparities

Any comparison between Heckscher's fraud and recent sentences in this District only serves to demonstrate the level of harm and abuse resulting from this defendant's thirty year scam of his family, friends, and neighbors. A review of some of the more significant is as follows:

- In *United States v. McCall* (CR 00-0505 WHA), in March 2010, the District Court imposed a sentence of 120 months on a corporate executive who committed accounting fraud. In that case, the defendant's adjusted offense level was 32 and his resultant range was 121 to 151 months. Notably, while the loss was calculated to be over $80 million, the loss was spread over thousands of individual and institutional investors who had suffered fractional losses in the value of the company's stock price. No victims were identified as either vulnerable nor financially insolvent. The court did not order any restitution to be paid but instead ordered a fine of $1 million.
- In *United States v. DelBaggio* (CR 09 - 296 CRB), the District Court imposed a sentence of 97 months on the defendant who had created a loss of approximately $60 million. The co-defendant in that action, Mr. Cacchione, was later sentenced to 60 months in prison for his role in the offense. However, the victims in that fraud were far fewer, highly sophisticated, and none were deemed either vulnerable nor financially insolvent. Indeed, many of the victims in that action were financial institutions with their own internal units of accountants and lawyers. As a result, the adjusted offense level for both defendants was calculated at a much lower level than that determined for Mr. Heckscher.
- In *United States v. Trabulse* (09 - 0350 WHA), the District Court imposed a sentence of 97 months on the defendant who had created a loss of approximately $17 million. The Court also ordered restitution to be paid in the amount of $8.5 million. The number of victims in that action were less than 200 in number, and the victims were highly sophisticated investors in a hedge fund. None of the victims were identified as either vulnerable nor financially insolvent.
- In *United States v. Camus* (CR 08 - 0231 MHP), the District Court imposed a sentence of 63 months on the defendant who had created a loss of approximately $1.9 million. The Court also ordered the defendant to pay restitution in the amount of $1.4 million. The short-term investment scheme had far fewer victims

than the present case and none of the victims were determined to have any special characteristic.

- In *United States v. Ehee* (CR 09 - 0105 WHA), the District Court imposed a sentence of 51 months for the manager of an investment fraud who had created a loss to his investors of $4 million. Again, the number of victims were far fewer than exists in this matter, and the victims were not found to have any special characteristics.
- In *United States v. Carrington* (CR 09 - 0791 DLJ), the District Court imposed a sentence of 48 months to the manager of an investment that created a loss of over $4 million. The Court ordered restitution of $3 million to the 13 victims. Once again, the number and nature of the victims, along with the size of the loss, is demonstratively different from the present matter.
- In *United States v. McVickar* (CR 09 - 0472 CBM), the District Court sentenced the defendant who ran a short term investment scheme to 42 months in prison and ordered restitution of nearly $500,000. That matter involved 10 victims, none of whom were determined to be vulnerable.

None of these cases include the same combination of size, length, and number of victims as this one now before the Court. While the above-referenced defendants engaged in wrongful and some cases egregious conduct, Heckscher's conduct is unique in this District in its sheer scope and duration. His fraud was perpetrated day-by-day, month-by-month, and year-by-year, at his own direction and control, for a full thirty years. For it, he was able to fund his secret life of gambling and avoid detection by family, friends, and law enforcement.

5. The Need to Provide Restitution

The United States has advised the Court via notice on May 4, 2010, that the precise number, amount, and form of restitution remained uncertain as to all victims. In particular, the United States advised the Court that impact statements were still be receiving from victims, such that it recommended that the Court extend the time for determination of restitution an additional 90 days from the date of sentencing. *See* 18 U.S.C. § 3664(d)(5).

In addition, the United States again recommends, as it did in its May 4th filing, that the due to the amount of restitution at issue, the number of potential victims, and the limited assets currently known to the exist, the Court may see fit to appoint a special master, pursuant to 18 U.S.C. § 3664(d)(6). This special master would be empowered by the Court to make proposed findings of facts and recommendations as to the disposition of restitution, and specifically, the amount of restitution and payment schedule appropriate as to each victim of the defendant's criminal conduct, pursuant to 18 U.S.C. § 3664(d)(6) and 18 U.S.C. § 3664(i).

In addition to verifying victim losses and the allocation of restitution among victims, the special master may be able to advise the Court and the counsel as to the disposition of a life insurance policy currently in effect for the defendant. The United States has recently been advised by several victims that the Heckscher has a life insurance policy that remains in effect that, while it has no present cash value, does have a potential payout to beneficiaries in excess of a million dollars. The United States has further been advised by several victims – and this has been confirmed by defense counsel – that Heckscher added some investors to his life insurance policy over the years as a form of collateral to secure their investment into his scheme. The United States has also learned from other victims that many investors were promised to be similarly included on Heckscher's insurance, but they do not know if they were ever formally added as beneficiaries.

The United States has further been advised that the insurance company (the identity of which is not yet known) has contacted certain unidentified victims who are beneficiaries on the policy and asked them if they wished to pay the premiums that were unpaid and still to be paid in the future, in order to keep the policy in effect. The United States understands that these investor/victims/beneficiaries have in fact taken action to pay Heckscher's premiums, such that the life insurance policy remains in full force and effect.

As the Court will certainly agree, the existence and extent of such a life insurance policy, even a term life policy with no present cash value, may be very relevant to the determination of the order and allocation of restitution. As a result, the United States has contacted the FBI, the Probation Department, and the defense counsel in an effort to gather documents and further

information relative to this issue.

In summary, the United States is committed to the determination of and distribution of restitution as soon as practicable. The United States will continue to follow up on all leads regarding the location or identification of any assets that may be appropriate for judicial action. The 90 day extension requested by the United States will neither hinder nor delay the United States' efforts to maximize the recovery of victims.

6. Mitigating Factors

The United States fully recognizes that the defendant's actions since June 2009 merit consideration. The defendant did finally come forward and confess his scheme to the FBI and the United States Attorney's Office. He did make all of his business and personal financial records available to the FBI. He did agree to waive his right to a grand jury and proceed by way of information. He did agree to waive his right to a detention hearing and a bail hearing and instead go directly into custody at his arraignment. The defendant did agree to plea guilty and enter into a plea agreement in which he waived his right to jury trial and his right to appeal his sentence. All of that is commendable and did save the Government valuable time and resources.

That being said, the United States agrees with the recommendation of the Probation Department that no mitigating factor or factors exist so as to merit a sentence below the applicable Guidelines range. Moreover, the defendant has, in effect, received a benefit by coming forward, confessing, and pleading guilty to the sole count of the information. If the defendant had chosen to proceed by way of indictment, the defendant could well have faced multiple counts. If he had been tried and convicted or even pled guilty to multiple counts, the defendant might well face a higher statutory maximum, one that would permit a sentence at his likely Guidelines range of twenty-five to thirty years in custody. In other words, the defendant has received a benefit by confessing, accepting responsibility, and pleading guilty to full course of his criminal conduct.

IV. CONCLUSION

The United States asks the Court to sentence the defendant to 240 months of imprisonment to be followed by three years of supervised release. The United States also

recommends that the Court impose not only the conditions of supervised release suggested by the Probation Department but also any other terms and conditions deemed appropriate by the Court. In addition, the United States also requests that the Court impose a $100 special assessment for the conviction on the single count. The United States is not recommending a fine, in order to conserve any and all defendant for the payment of restitution to Heckscher's victims.

Finally, the United States recommends that the Court continue the issue of restitution until a date no later than 90 days after the date of defendant's sentencing, pursuant to 18 U.S.C. § 3664(d)(5). The United States further recommends that, in conjunction with that continuance, the Court also appoint a special master to make findings of fact and recommendations to this Court and counsel as to amount of restitution as well as the order and distribution of payment of restitution between and among the victims. The United States recommends that a report from such a special master be filed with the Court and counsel no later than three weeks prior to the date set for a hearing on restitution, so as to provide sufficient time for counsel to review, analyze, and comment upon the report in advance of the hearing on restitution.

Respectfully submitted,

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Dated: May 12, 2010

/S/
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